

In the Matter of Senior Training Technician (PC2241C),
Passaic County Board of Social Services
DOP Docket No. 2005-134
(Merit System Board, decided October 6, 2004)

The Division of Human Resource Information Services (HRIS) requests that the Merit System Board order the Passaic County Board of Social Services to return the November 26, 2002 certification (PL022485) of the eligible list for Senior Training Technician (PC2241C) for proper disposition.

By way of background, the Division of Selection Services (Selection Services) initially determined that Mahasen Adra-Halwani did not meet the eligibility requirements for the promotional examination for Senior Training Technician (PC2241C). The subject examination was processed as a written examination which resulted in a list, consisting of six eligibles. The eligible list promulgated on November 21, 2002 and will expire on November 20, 2005. All six eligibles were appointed from the November 26, 2002 certification (PL022485). In September 2003, Selection Services reconsidered its initial eligibility determination and admitted Ms. Adra-Halwani to the subject examination. After passing a make-up examination, Ms. Adra-Halwani was ranked as "4A," since her score on the examination was between the scores received by the fourth and fifth ranked eligibles on the original eligible list.

Thereafter, on March 2, 2004, the certification (PL022485), with Ms. Adra-Halwani's name added to it, was returned to the appointing authority for proper disposition since Ms. Adra-Halwani was originally deemed ineligible due to Department of Personnel error. *See N.J.A.C. 4A:4-2.9(g)*. The appointing authority was informed by HRIS that Ms. Adra-Halwani was to be considered for appointment and that the certification was to be returned to it, indicating a disposition code for Ms. Adra-Halwani. Additionally, the appointing authority was advised by staff from the Division of Merit System Practices and Labor Relations (MSPLR) that pursuant to *N.J.A.C. 4A:4-1.4*, the appointments of the individuals on the original certification were conditional, pending disposition of the revised certification and that the appointment of the appellant was not mandated. Rather, the appointing authority was required to consider her for an appointment and properly dispose of the certification. *See N.J.S.A. 11A:4-8, N.J.A.C. 4A:4-4.8(a)3 and N.J.A.C. 4A:4-4.7*. It was noted that if the appointing authority appointed the appellant, instead of one of the lower ranked eligibles, then since the lower-ranked eligible's appointment was considered conditional, he or she would simply return to his or her previous permanent position without the need for "layoff" or "removal" procedures. However, the appointing authority refused to return the certification with a disposition code for Ms. Adra-Halwani. Subsequently, HRIS referred the matter to the Board for enforcement.

In response, the appointing authority requests that the Department of Personnel (DOP) issue new certification notices to all of the eligibles explaining the "regulations and findings of the DOP in this matter." The appointing authority asserts that the "new" certification should have the original date of issue. Moreover, the appointing authority asserts that it should be allowed ample time to utilize the "rule of three" and consider *all* of the eligibles on the eligible list to determine who is "best suited" to fill the existing six positions.

CONCLUSION

In the instant matter, the appointing authority requests a new certification and the ability to consider all seven eligibles for the six positions. However, *N.J.A.C. 4A:4-1.4(a)* provides that a conditional regular appointment may be made when there is a dispute or an appeal concerning a higher ranking eligible which may affect the final appointment. Therefore, when Ms. Adra-Halwani appealed her eligibility, the appointments made by the appointing authority from the November 26, 2002 certification become conditional. Thereafter, once Ms. Adra-Halwani was ranked as 4A, only the appointments of the eligibles who were ranked as five and six would be considered conditional pending return of the certification. To allow the appointing authority to reconsider its appointments of individuals ranked above Ms. Adra-Halwani would be inappropriate. Therefore, the appointing authority may only consider Ms. Adra-Halwani and the eligibles who were ranked five and six regarding the final two available positions. If the appointing authority bypasses Ms. Adra-Halwani or eligible five, then it must present a reason for the bypass. *See N.J.A.C. 4A:4-4.8(b)4* (In disposing of a certification, an appointing authority must, when bypassing a higher ranked eligible, give a statement of the reasons why the appointee was selected instead of a higher ranked eligible). In addition, the Board notes that the only interest which results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990).

Although the appointing authority requested that the DOP issue new certification notices to all of the eligibles, *N.J.A.C. 4A:4-1.4(d)* provides that the appointing authority shall advise the conditional appointees of their status and rights, including any change in appointment status. Consequently, it is the appointing authority's responsibility to notify the eligibles who ranked five and six of their status.

The Board is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Merit System laws or rules or any order of the Board or Commissioner. *N.J.S.A. 11A:10-3; N.J.A.C. 4A:10-2.1(a)2. See In the Matter of Fiscal Analyst (M1351H)*, Newark, Docket No. A-4347-87T3 (App. Div. 1989). Therefore, the appointing authority is ordered to return the certification, noting a disposition code for Ms. Adra-Halwani and eligibles five and six, within 20 days of receipt of this decision. If, at any time, the appointing authority does not adhere to the timeframes for the proper certification disposition without an approved extension of time, it shall be assessed fines of \$100 per day for each day of continued violation up to a maximum of \$10,000.

ORDER

Therefore, the Board orders that the appointing authority properly dispose of the certification within 20 days, indicating the interested eligible candidates and making the appropriate appointments from the eligible list. If, at any time, the appointing authority does not adhere to the timeframes for the proper certification disposition without an approved extension

of time, it shall be assessed fines of \$100 per day for each day of continued violation up to a maximum of \$10,000.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.